

ORIGINAL

ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Revocation of License of)

SANDRA V. CRANE)
Amateur Radio Station N6TFO)
Marina Del Ray, California)

and)

Suspension of License of)

SANDRA V. CRANE)
Amateur Extra Class)
Radio Operator License)

and)

Revocation of License of)

CHARLES P. PASCAL)
Amateur Radio Station WB6CIY)
Carson City, Nevada)

and)

Suspension of License of)

CHARLES P. PASCAL)
Amateur Extra Class)
Radio Operator License)

To: Hon. Joseph Stirmer,
Chief Administrative Law Judge

PR Docket No. 92-119

RECEIVED

AUG 13 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**MOTION FOR LEAVE TO REPLY AND JOINT REPLY TO BUREAU OPPOSITION
TO MOTION TO SCHEDULE FIELD HEARING OR FOR CHANGE OF VENUE**

Sandra V. Crane and Charles P. Pascal (collectively the
"Respondents"), by their attorneys hereby request permission to
file a reply and hereby reply to the opposition filed August 6,

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1992 by the Chief of the Private Radio Bureau ("Bureau"). In support, the following is shown:^{1/}

1. The Bureau opposes either the holding of a field hearing or the change of venue of this proceeding to the Los Angeles area. The Bureau asserts that it believes the 16 witnesses which the Respondents intend to call need not present oral testimony because (a) the testimony in this proceeding will be taken in writing; and (b) because the Bureau believes the testimony of these witnesses will be of marginal significance.

2. In addition, the Bureau alleges that Respondents have not made a showing that adverse witnesses Mr. George Sfair and Mr. Fred Ordway are likely to provide testimony of probative value. As to Mr. Sfair, the Bureau asserts it is undisputed that Ms. Crane administered an examination to Tracy Gullotti, her daughter, and that the Respondents have not shown that Mr. Sfair could add anything of significance to this issue. Moreover, as to Mr. Ordway, the Bureau asserts that his testimony, concerning the general acceptability in the amateur community of the methods Mr. Pascal uses to teach amateur classes, is not in issue and is not relevant.

3. The Bureau further asserts that it would be inconvenient for its other witnesses, Mr. Fred Maia, Mr. James Georgias, Mr. John B. Johnston and Mr. Walter Ramsey to testify

^{1/} Leave should be granted to the Respondents to submit this reply and have it considered on the record by the Chief Administrative Law Judge in making his determination upon the Respondents' request for a hearing session in the Los Angeles area.

in Los Angeles, and that Ms. Christine McElwain, the Bureau's chief witness, will be in Raleigh, NC at the time of the currently scheduled Washington hearing and that she will be required to travel only a short distance. Finally, the Bureau argues that holding the hearing in Washington will minimize overall travel when considering that the Bureau and the presiding Administrative Law Judge will have to travel to Los Angeles area.

4. The Bureau's arguments must be rejected. First, although Respondents believe that the interests of justice will best be served by changing the venue of this proceeding entirely to Los Angeles, to the extent that it would be inconvenient for any of the Bureau's witnesses to be heard in Los Angeles, Respondents have no objection to the taking of their testimony in Washington, with but one exception. It is essential to the conduct of the Respondents' case that Bureau witness Christine McElwain and Bureau witness Mr. Ramsey (or his replacement) be present for and/or available for recall for the testimony of Charles P. Pascal.^{2/} Since Ms. McElwain is a resident of the Los Angeles area, her testimony in Los Angeles should not present any problem, nor increase the travel burdens on any party.

^{2/} The Bureau's outline of evidence indicates that it will seek to show through the testimony of Mr. Ramsey from the notes Ms. McElwain took from Mr. Pascal's lecture, that in teaching his amateur radio classes Mr. Pascal failed to cover more than 50 percent of the question pools. The Joint Respondents intend to impeach this testimony through a demonstration of Mr. Pascal's teaching methods, which will require (1) Ms. McElwain's presence in the hearing room taking notes in the same manner which she allegedly took notes during Mr. Pascal's lecture, and (2) Mr. Ramsey's evaluation of those notes.

Moreover, the Bureau has indicated that an alternate witness to Mr. Ramsey would be possible to the extent testimony was taken in the Los Angeles area.

5. Respondents are, of course, willing to work with the Bureau to minimize travel expenses, and would otherwise be agreeable to having testimony taken in Washington to the extent that Bureau witnesses are located closer to Washington than to the Los Angeles area. Thus, that some Bureau witnesses would be inconvenienced if all hearing sessions were in Los Angeles, is not a ground for denying the Respondents motion since we do not generally object to hearing Bureau witnesses in Washington.

6. With respect to the matter of the testimony of Messrs. Sfair and Ordway, the Respondents respectfully take issue with the Bureau's representations concerning their possession of relevant evidence. Since the filing of their outline of evidence and witness list on June 29, 1992, the Respondents, through the results of an FOIA action filed by Mr. Pascal, have learned that Mr. Sfair and Mr. Ordway precipitated this proceeding by the submission of a complaint concerning Messrs. Crane and Pascal to Mr. Maia, and at least Mr. Ordway participated in planning the so-called "investigation" of the Respondents conducted by witness Ms. McElwain. As such, the testimony of both of these witnesses is essential to illustrate the bias which lead to and which tainted the investigation of Respondents. It is the position of Respondents that this bias was operative in the selection of Ms. McElwain to conduct her "investigation," and that the testimony

of Mr. Sfair and Mr. Ordway will show that Ms. McElwain's testimony against the Respondents is biased. Thus, their testimony, as well as the testimony of one David Morse, who also participated in the planning and conduct of the investigation is essential to the Respondents' defense. Since obviously such adverse witnesses cannot be presented by written submission, there is the need for their live testimony to be taken.

7. Moreover, with respect to Mr. Sfair and his participation in testing sessions where Ms. Crane was a volunteer examiner when her daughter was being tested, the Respondents intend to show that Mr. Sfair knew that Ms. Gullotti was Ms. Crane's daughter, that Mr. Sfair knew Ms. Crane's testing of her daughter was against the rules, and that Ms. Crane was not aware of this fact. In other words, the Respondents intend to show that Ms. Crane was set up by Mr. Sfair. His testimony is thus necessary to go to the element of whether Ms. Crane intended to commit a violation of the Commission's rules which is obviously relevant to the question of the appropriate sanction for her alleged violation. Thus, Mr. Sfair's live testimony is necessary on this point as well.

8. Finally, as it concerns Mr. Ordway, the acceptability of the methods by which Mr. Pascal teaches his classes are clearly relevant from the Bureau's own submissions in this proceeding. In its June 15, 1992 List of Witnesses and Outline of Testimony, the Bureau proposes to introduce the testimony of Mr. Ramsey, who supposedly will testify concerning the amount of

preparation typically required to pass amateur examination elements 1A, 2 and 3A. In addition, he supposedly will testify that based on Ms. McElwain's notes, the percentage of the question pools for elements 2 and 3A which were covered during the classes attended by Ms. McElwain. This testimony is clearly designed to show that Mr. Pascal's instructions inappropriately failed to teach the bulk of the answers to the question pools for exam elements 1A, 2 and 3A. Respondents intend from their examination of Mr. Ordway to show that it is a perfectly acceptable teaching method to teach concepts -- as does Mr. Pascal -- rather than individual questions and answers, and thus to counter any inference that Mr. Pascal had knowledge of and taught only the material which would be on the examinations following his classes.

9. With respect to the Bureau's point regarding the taking of testimony from the Respondent's 16 identified witnesses in the Los Angeles area, Respondents do intend to the extent possible to present the testimony of these witnesses in writing, and the procedural schedule negotiated between the Bureau and Mr. Pascal at an early stage of this proceeding provided for written submissions. However, there is no guarantee that all such witnesses will voluntarily provide written testimony.^{3/}

^{3/} We note that following the filing of the Joint Motion, the Bureau issued notices of apparent liability to the volunteer examiners present at the August 4, 1991 testing session for \$1,700 each. See, e.g., Exhibit I. We doubt very many witnesses will voluntarily cooperate with the Respondents where the price is a \$1,700 fine from this agency.

Moreover, the Respondents did not consent to presenting the entirety of their case in rebuttal to the Bureau's case in chief in writing, nor did the presiding officer order that all such testimony will be taken in writing. See FCC 92M-697 June 22, 1992), corrected (June 24, 1992).

10. Second, the Bureau suggests that these witnesses will offer only marginal testimony with respect to the issues in the proceeding. The Respondents do not understand this claim. The witnesses who will be presented will be the volunteer examiners as well as various student-examinees who were present during the classes taught by the Respondents and during the testing sessions in question. They will contradict the testimony of Christine McElwain that the tests were compromised by the students having advance knowledge of the tests. We do not see how this testimony can be considered minimal, and we do not see how the Bureau would not intend to cross examine these witnesses. To the extent this motion is denied based on the Bureau's statements that they do not consider that these witnesses will present any significant testimony, we believe the Chief Administrative Law Judge should hold that the Bureau's opposition of the Respondents' motion constitutes a waiver of any right to cross examine these witnesses, absent such cross examination being conducted in Los Angeles.

11. Finally, the Bureau misreads the Respondents point regarding requiring the hardship which would be occasioned by requiring Mr. Pascal to appear in Washington for hearing. The

undue hardship is patent in requiring a visually disabled person -- such as Mr. Pascal -- to travel to a city with which he is not familiar and where he has no one available to assist him. The Bureau's insensitivity on this issue is exactly what the Americans with Disabilities Act of 1990 was designed to combat. See 42 U.S.C. Section 12101 et seq.

12. As the Respondents indicated previously, both Ms. Crane and Mr. Pascal are unemployed. As a result of the Commission's enforcement actions against them and the actions of Mr. Maia, the amateur radio school they administered has been put out of business. While perhaps they could afford to come to Washington, they cannot afford the cost of transporting other witnesses here. The failure to hold a field hearing in this case will result in a denial of their right to a fair hearing in this proceeding. Contrary to the Bureau's submission, the Respondents have shown they need the live testimony of witnesses beyond themselves. Thus, Rocket Radio, 57 F.C.C.2d 759 (1976) is

applicable and requires the Chief Administrative Law judge at the very least to schedule a field hearing in the Los Angeles area.

Respectfully submitted,

CHARLES P. PASCAL

SANDRA CRANE

By


George L. Lyon, Jr.
Their Counsel

Lukas, McGowan, Nace and Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, D.C. 20006

(202) 857-3500

Martin J. Barab
Of Counsel to Sandra Crane
9606 Santa Monica Blvd., 3rd Floor
Beverly Hills, CA 90210

(310) 859-6644

August 13, 1992

EXHIBIT I

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
August 4, 1992

In Reply Refer To:
1700C
7240-F
0170104-91079
NAL 117XX079

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Lance B. Ferranti
719 Westgate Avenue #2
Los Angeles, California 90049

Dear Mr. Ferranti:

This letter is a Notice of Apparent Liability (NAL) for a monetary forfeiture under Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b). You appear to have incurred liability totalling \$1,700 for your apparent willful violation of Sections 97.503(a) (administration of Morse Code examination that did not use all 43 required characters), 97.509(a) (administration of examination without the presence of all three volunteer examiners (VEs) throughout the entire examination), and 97.509(c) (administration of compromised examination), 47 C.F.R. §§ 97.503(a), 97.509(a) and 97.509(c) (copies enclosed).

These determinations are based on the August 4, 1991, amateur service examination session, at which you were a volunteer examiner. Our information indicates that one of the VEs was not present during the administration of examination Element 2. Therefore, all 3 VEs were apparently not present throughout the entire examination. Additionally, the Morse Code examination (Element 1(a)) had apparently been compromised; our information indicates that Charles P. Pascal sent the characters for the examination and, prior to the examination, had disclosed the content of the examination to his students. Last, the characters sent by Mr. Pascal did not include all 43 required characters.

On August 1, 1991, the Commission released a Policy Statement, In re Standards for Assessing Forfeitures, 6 FCC Rod 4695 (1991), which prescribes a forfeiture amount of \$500 for miscellaneous violations. All violations alleged in this NAL are in the miscellaneous category. Your total forfeiture of \$1,700 includes \$500 for your apparent violation of Section 97.503(a); \$250 for your apparent violation of Section 97.509(a) and \$950 for your apparent violation of Section 97.509(c). Your violation of Section 97.509(a) is a less significant violation than most violations in the miscellaneous category. We have, therefore, reduced the forfeiture amount for that violation to \$250 in accordance with the Policy Statement's downward adjustment criterion specifying a 50-90% reduction for "minor" violations. On the other hand, your violation of Section 97.509(c) is a more serious violation than most violations in the miscellaneous category. We have, therefore, increased the forfeiture amount for that violation to \$950, in accordance with the Policy Statement's upward adjustment criterion specifying a 50-90% increase for egregious misconduct.

Mr. Lance B. Ferranti

2.

Although this NAL is not a final determination of liability, if you fail to respond and we have no further information before us, we may issue a \$1,700 Notice of Forfeiture, which would be a final determination. You may respond affirmatively in either of two ways. You may send payment of the \$1,700 to the Chicago, Illinois, address specified below, or you may send a detailed rebuttal statement of facts and reasons to the Washington, D.C., address specified below.

You should respond to this NAL within thirty days of its date. Please refer to the reply sheet we have enclosed for your convenience.

Sincerely,



Eric Malinen
Senior Attorney
Special Services Division

Enclosures

Send payment to:

Federal Communications Commission
Post Office Box 73482
Chicago, Illinois 60673-7482

Send any rebuttal statement to:

Federal Communications Commission
Special Services Division
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

Copy to: WSYI VEC

P.O. Box 565101
Dallas, Texas 75356-5101

CERTIFICATE OF SERVICE

I, Lydia N. Hicks, Secretary, at the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, certify that true copies of the foregoing document were sent this 13th day of August 1992, via first class mail, postage prepaid to the following:


Honorable Joseph Stirmer*
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Communications Commission
2000 L Street, NW, Room 226
Washington, DC 20554

Thomas D. Fitz Gibbon*
Private Radio Bureau
Federal Communications Commission
Room 5328, 2025 M Street, NW
Washington, DC 20554

Eric J. Malinen*
Private Radio Bureau
Federal Communications Commission
Room 5331, 2025 M Street, NW
Washington, DC 20554

Martin J. Barab, Esquire
9606 Santa Monica Blvd.
Third Floor
Beverly Hills, CA 90210

*Hand-Delivered



Lydia N. Hicks